

1 LABONI A. HOQ (SBN 224140)  
2 *laboni@hoqlaw.com*  
HOQ LAW APC  
3 P.O. Box 753  
South Pasadena, California 91030  
4 Telephone: (213) 973-9004

5 EVA BITRAN (SBN 302081)  
*ebitran@aclusocal.org*  
6 ACLU FOUNDATION OF SOUTHERN CALIFORNIA  
1313 West Eighth Street  
7 Los Angeles, California 90017  
Telephone: (213) 977-9500  
Facsimile: (213) 915-0219

8 Attorneys for Plaintiff  
9 (*additional counsel information on next page*)

10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 AMERICAN CIVIL LIBERTIES  
13 UNION FOUNDATION OF  
14 SOUTHERN CALIFORNIA,

15 *Plaintiff,*

16 v.

17 UNITED STATES IMMIGRATION  
18 AND CUSTOMS ENFORCEMENT,  
UNITED STATES DEPARTMENT  
OF HOMELAND SECURITY,

19 *Defendants.*

20 Case No. 2:22-CV-04760-SHK

21 **PLAINTIFF'S REPLY IN SUPPORT**  
**OF MOTION FOR SUMMARY**  
**JUDGMENT AND OPPOSITION**  
**TO DEFENDANTS' CROSS-**  
**MOTION**

22 Honorable Shashi H. Kewalramani  
United States Magistrate Judge

Hearing Date: May 7, 2025  
Time: 10:00 a.m.  
Place: 3470 12<sup>th</sup> St., Riverside, CA  
92501, Courtroom 3 or 4

1 EUNICE CHO (*pro hac vice*)  
*echo@aclu.org*  
2 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
NATIONAL PRISON PROJECT  
3 915 Fifteenth Street NW, 7th Floor  
Washington, DC 20005  
4 Telephone: (202) 548-6616

5 KYLE VIRGIEN (SBN 278747)  
*kvirgien@aclu.org*  
6 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
NATIONAL PRISON PROJECT  
7 425 California St., Suite 700  
San Francisco, CA 94104  
8 Telephone: (202) 393-4930

9 *Attorneys for Plaintiff*

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

28 *ACLU of Southern California v. U.S. ICE, et al.*, Case No. 2:22-CV-04760-SHK  
PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT  
AND OPPOSITION TO DEFENDANTS' CROSS-MOTION

1  
**TABLE OF CONTENTS**

2	I.	INTRODUCTION.....	1
3	II.	ARGUMENT .....	1
4	A.	Legal Standard.....	1
5	B.	ICE Has Failed to Conduct an Adequate Search for	
6		Responsive Documents.....	2
7	1.	Parts 1 through 3 .....	2
8	2.	Part 5 .....	6
9	3.	Parts 6 and 7.....	8
10	4.	Part 8 .....	10
11	5.	Part 9 .....	12
12	III.	CONCLUSION .....	14
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

**TABLE OF AUTHORITIES**

	Page(s)
<b>Cases</b>	
<i>Anderson v. Dep't of Health &amp; Hum. Servs.</i> , 907 F.2d 936 (10th Cir. 1990).....	12
<i>Campbell v. United States Dep't of Justice</i> , 164 F.3d 20 (D.C. Cir. 1998).....	6, 11
<i>Ctr. for Investigative Reporting v. United States Dep't of Just.</i> , 14 F.4th 916 (9th Cir. 2021).....	14
<i>Fraihat v. U.S. Immigr. &amp; Customs Enf't</i> , No. 5:19-cv-01546 (C.D. Cal. filed Aug. 19, 2019) .....	11, 12
<i>Hamdan v. Dep't of Just.</i> , 797 F.3d (9th Cir. 2015) .....	3
<i>Iturralde v. Comptroller of Currency</i> , 315 F.3d 311 (D.C. Cir. 2003) .....	5, 6
<i>Mattachine Soc'y of Washington, D.C. v. United States Dep't of Just.</i> , 267 F. Supp. 3d 218 (D.D.C. 2017) .....	7
<i>Nolen v. Dep't of Justice</i> , 146 F. Supp. 3d 89 (D.D.C. 2015) .....	6
<i>Oglesby v. U.S. Dep't of Army</i> , 920 F.2d 57 (D.C. Cir. 1990).....	12
<i>Pub. Just. Found. v. Farm Serv. Agency</i> , No. C 20-01103 WHA, 2020 WL 6787136 (N.D. Cal. Oct. 5, 2020) .....	11
<i>Stein v. CIA</i> , 454 F. Supp. 3d 1 (D.D.C. 2020) .....	10
<i>Transgender Law Center v. Immigr. &amp; Customs Enf't</i> , 46 F.4th 771 (9th Cir. 2022).....	<i>passim</i>
<i>ACLU of Southern California v. U.S. ICE, et al.</i> , Case No. 2:22-CV-04760-SHK PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO DEFENDANTS' CROSS-MOTION	

1           **Statutes**

2           Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.* ..... *passim*

3           **Other Authorities**

4           6 C.F.R. § 5.4(i)(2)(ii) ..... 14

5           U.S. Dep’t of Homeland Sec., *Privacy Impact Assessment for the*  
6           *Significant Event Notification (SEN) System*, Oct. 15, 2021,  
7           <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice023a-sen-october2021.pdf> [<https://perma.cc/7EEE-A6JW>] ..... 8, 9

8           U.S. Dep’t of Just., *FOIA Update: OIP Guidance: Determining the*  
9           *Scope of a FOIA Request*, Jan. 1, 1995,  
10          <https://www.justice.gov/archives/oip/blog/foia-update-oip-guidance-determining-scope-foia-request> [<https://perma.cc/NTZ6-RUZL>] ..... 12

12          U.S. Immigr. & Cust. Enf’t, *Significant Detainee Illness (SDI)*, Dec. 3,  
13          2021,  
14          [https://www.ice.gov/doclib/foia/policy/directive11853.3\\_SignificantDetaineeIllness.pdf](https://www.ice.gov/doclib/foia/policy/directive11853.3_SignificantDetaineeIllness.pdf) [<https://perma.cc/6RSN-BYSY>] ..... 7

1       **I. INTRODUCTION**

2                  This Freedom of Information Act (“FOIA”) suit seeks information about  
3 Immigration and Customs Enforcement’s (“ICE”) practice of releasing detained  
4 immigrants who are critically ill from custody prior to imminent death, which allows  
5 the agency to avoid public reporting and accountability for these deaths. ICE now  
6 moves for summary judgment, arguing that it has fully complied with its obligations  
7 to produce responsive records to a FOIA request filed by Plaintiff American Civil  
8 Liberties Union Foundation of Southern California (“ACLU-So Cal”), on the basis  
9 of an affidavit describing its search process. ICE’s affidavit, however, does not show  
10 that it has searched for all appropriate files sufficient for the court to grant it summary  
11 judgment. While ICE purports to have conducted exhaustive searches for responsive  
12 records, a close examination of ICE’s search history, as described in its motion and  
13 affidavit, reveals that the agency’s search methods have resulted in significant  
14 numbers of irrelevant and duplicative documents. At the same time, ICE has flatly  
15 refused to conduct searches for highly responsive documents in response to “obvious  
16 leads for relevant documents,” and “positive indications of overlooked materials”  
17 provided by Plaintiff. *Transgender Law Center v. Immigr. & Customs Enf’t*, 46 F.4th  
18 771, 780 (9th Cir. 2022). Because ICE has failed to meet its burden that it has  
19 conducted a search “reasonably calculated to uncover all relevant documents,” *id.* at  
20 779, its motion for summary judgment should be denied. Instead, the court should  
21 grant Plaintiff’s motion, and order ICE to conduct a search and promptly produce  
22 responsive records.

23       **II. ARGUMENT**

24           **A. Legal Standard**

25                  The parties agree that search adequacy issues are governed by the standard  
26 most recently set out by the Ninth Circuit in *Transgender Law Center*. 46 F.4th at  
27

1 779; Def.’s Mot. Summ. J. (“Def.’s MSJ”) at 13,<sup>1</sup> ECF No. 113 (citing *Transgender*  
2 *L. Ctr.* for the legal standard); *see also* Order at 26-27, ECF No. 87 (relying on  
3 *Transgender L. Ctr.* for the legal standard in the Court’s prior summary judgment  
4 ruling on search adequacy). In keeping with the important “purpose and policy of  
5 FOIA,” the law imposes a “heavy burden” on the government to demonstrate search  
6 adequacy “beyond material doubt.” *Transgender L. Ctr.*, 46 F.4th at 779. Under this  
7 standard, a government agency bears the burden to “demonstrate[] that its search was  
8 reasonably calculated to uncover all relevant documents,” accounting for “positive  
9 indications of overlooked materials” and “obvious leads.” *Id.* at 779, 780 (internal  
10 quotation marks and citation omitted). Plaintiff has provided ample evidence of  
11 ICE’s failure to diligently respond to leads and positive indications of overlooked  
12 materials, and ICE cannot carry its burden to demonstrate that it responded with  
13 adequate searches.

14           **B. ICE Has Failed to Conduct an Adequate Search for Responsive  
15           Documents.**

16           **1. Parts 1 through 3**

17           Defendants do not overcome the undisputed evidence that ICE failed to  
18 adequately search for documents responsive to Parts 1 to 3 of Plaintiff’s Request,  
19 because it failed to follow up on ““positive indications of overlooked materials,”” and  
20 ““leads that emerge[d]” in its initial searches. *Transgender L. Ctr.*, 46 F.4th at 780  
21 (citations omitted). The overlooked materials include communications by ICE  
22 headquarters staff regarding Martin Vargas Arellano’s deathbed release from ICE  
23 custody. These materials include email files of two ICE headquarters officials, and  
24 “expert recommendations” from the DHS Office of Civil Rights and Civil Liberties’  
25 (“CRCL”) investigation into the propriety of Mr. Vargas Arellano’s deathbed release.

---

26  
27           <sup>1</sup> Citations to page numbers in briefs and exhibits are made in accordance with  
28 ECF-assigned pagination.  
*ACLU of Southern California v. U.S. ICE, et al.*, Case No. 2:22-CV-04760-SHK

1 See Exs. to Decl. Eunice Cho at 176-77; 176-177, 198-207, 208-216, ECF No. 112-  
2 4.

3 ICE does not dispute the existence of these overlooked materials, which should  
4 have triggered the agency to conduct further searches. *Transgender L. Ctr.* at 780;  
5 Def.’s Resp. to Pl.’s Statement of Uncontroverted Facts ¶¶ 2-3, ECF No. 113-3.  
6 Instead, it attempts to paint this evidence of its search inadequacy as “immaterial,”  
7 ECF No. 113-3 ¶¶ 2-3, relying on a deficient and conclusory search adequacy  
8 declaration and misapplication of law. Because the “leads” Plaintiff identified  
9 provide a systematic roadmap to additional responsive documents, *see* ECF No. 112-  
10 4 at 176-77, 198-220, and Defendants have inexplicably failed to follow them,  
11 Defendants’ search methodology is flawed and summary judgement should be  
12 granted in Plaintiff’s favor.

13 First, ICE’s Declaration of Fernando Pineiro (“Pineiro Decl.”), ECF No. 113-  
14 1, fails to meet its burden for search adequacy because it does not explain why ICE  
15 failed to follow “new leads and indications of overlooked material.” *Transgender L.*  
16 *Ctr.*, 46 F.4th at 781 (reversing grant of summary judgment on this ground); *see also*  
17 *Hamdan v. Dep’t of Just.*, 797 F.3d at 759, 770 (9th Cir. 2015) (agency declarations  
18 must be “reasonably detailed” and “nonconclusory”) (citations and quotations  
19 omitted). Importantly, the Pineiro Declaration fails to justify why ICE did not  
20 conduct a search of two headquarters officials Plaintiff identified as likely having  
21 responsive documents. One is an ICE headquarters Detention and Deportation  
22 Officer (“DDO”) in the “Field Operations Division” at ICE headquarters, who in a  
23 March 4, 2021 email directed ICE Los Angeles Field Office staff (“LOS”) at the  
24 Adelanto Detention Center to prepare “the necessary paperwork for a death  
25 notification in the event of [Mr. Vargas Arellano’s] demise.” ECF No. 112-4 at 177.  
26 Regarding this ICE headquarters DDO, whose name is redacted but whose  
27 headquarters “202” Washington, D.C. area code is identified, the Pineiro Declaration  
28 *ACLU of Southern California v. U.S. ICE, et al.*, Case No. 2:22-CV-04760-SHK  
PLAINTIFF’S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT  
AND OPPOSITION TO DEFENDANTS’ CROSS-MOTION

1 attests, in conclusory fashion, that because it searched two of the other DDOs on the  
2 March 4, 2021 email chain, “[t]here is no reason to believe [the ICE headquarters  
3 DDO] … would have any additional information,” and further searches “would likely  
4 turn up duplicative records.” Pineiro Decl. ¶ 29. This speculation about what an  
5 additional search “would likely” turn up, *id.*, falls well short of ICE’s burden—  
6 particularly because ICE’s search of DDOs for Mr. Vargas Arellano was limited to  
7 those in the Los Angeles Field Office. *Id.* ¶ 19. A search of a *headquarters* DDO  
8 would capture different, headquarters-level communications that the Los Angeles  
9 Field Office DDOs would not have been copied on, so that such a search of those  
10 emails would *not* result in duplicative documents. Importantly, the March 4, 2021  
11 email makes clear that the ICE headquarters DDO, and likely others at ICE  
12 headquarters, had prior discussions regarding Mr. Vargas Arellano’s case, which  
13 have not been produced. ECF No. 112-4 at 177 (“Field Ops has been notified that the  
14 detainee listed above is in serious medical condition.”). These discussions likely  
15 prompted ICE headquarters to direct the Los Angeles Field Office staff to begin  
16 drafting a death notification for Mr. Vargas Arrellano. *Id.* Yet ICE has failed to  
17 produce any correspondence following this direction, including any communications  
18 indicating whether or not its instruction to prepare a death notification was followed,  
19 and why. ICE should be ordered to search for and produce missing communications  
20 involving the ICE headquarters DDO.

21 Even more dispositive of ICE’s search inadequacy is the fact that the Pineiro  
22 Declaration provides no justification for ICE’s failure to search the emails of ICE  
23 headquarters official Corey Price. Nor does it mention, let alone explain, why it  
24 failed to search for the “expert recommendations” CRCL shared with Mr. Price and  
25 other ICE officials regarding its investigation into the propriety of Mr. Vargas  
26 Arellano’s deathbed release. Plaintiff has identified Mr. Price, ICE’s Executive  
27 Associate Director for Enforcement and Removal Operations, as someone who  
28 *ACLU of Southern California v. U.S. ICE, et al.*, Case No. 2:22-CV-04760-SHK  
PLAINTIFF’S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT  
AND OPPOSITION TO DEFENDANTS’ CROSS-MOTION

1 would likely have responsive documents, because he was copied on a CRCL  
2 memorandum seeking ICE’s response to its recommendations on this issue. ECF No.  
3 112-4 at 206. The Pineiro Declaration’s silence is deafening, and warrants summary  
4 judgment against ICE and in Plaintiff’s favor.

5 Second, Defendants misapply the holding in *Transgender Law Center*, 46  
6 F.4th at 780, as to Parts 1-3, in an attempt to evade ICE’s obligation to conduct  
7 additional searches based on the leads Plaintiff identifies. Def.’s MSJ at 11.  
8 *Transgender Law Center* noted that “an agency is not required to account for  
9 documents which the requester has in some way identified *if it has made a diligent*  
10 *search for those documents in the places in which they might be expected to be*  
11 *found.*” *Id.* at 781 (emphasis added). Here, as discussed above, Plaintiff has plainly  
12 demonstrated ICE’s failure to “ma[k]e a diligent search for [] documents in the places  
13 in which they might be expected to be found,” *id.*, including in a search of at least  
14 two ICE headquarters staff. Further, the leads Plaintiff identified are not to a single  
15 document, but rather a key set of documents at the core of Plaintiff’s FOIA request –  
16 ICE policies and practices related to terminally ill detainees. *See* ECF No. 112-4 at  
17 193 (demonstrating the existence of ICE headquarters communications directing ICE  
18 field office staff to prepare a detainee death notification, including “a detailed  
19 moment by moment account of the medical treatment the alien received, in particular  
20 after ICE became aware the alien was in crisis.”); ECF No. 112-4 at 211  
21 (demonstrating the existence of CRCL “expert recommendations,” noting that “From  
22 a Quality Assurance/Quality Improvement perspective, not doing a [Detainee Death  
23 Report] for patients who die shortly after release from custody who are hospitalized  
24 and subsequently die is a missed opportunity to improve the care provided and reduce  
25 liability.”).

26 Moreover, *Iturralde v. Comptroller of Currency*, 315 F.3d 311 (D.C. Cir.  
27 2003), which Defendants cite, Def.’s MSJ at 11, explicitly confirms that a further  
28 *ACLU of Southern California v. U.S. ICE, et al.*, Case No. 2:22-CV-04760-SHK  
PLAINTIFF’S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT  
AND OPPOSITION TO DEFENDANTS’ CROSS-MOTION

1 search is warranted given the facts here. *Iturralde* specifically states, “In certain  
2 circumstances, a court may place significant weight on the fact that a records search  
3 failed to turn up a particular document in analyzing the adequacy of a records search.”  
4 315 F.3d at 315 (citing *Krikorian v. Dep’t of State*, 984 F.2d 461, 468 (D.C. Cir.  
5 1993)). *Iturralde* identifies circumstances that would overcome an agency search  
6 declaration, including where: (1) the agency “failed to search particular offices or  
7 files where the document might well have been found,” *id.* (citing *Valencia–Lucena*  
8 *v. U.S. Coast Guard*, 180 F.3d 321, 327 (D.C. Cir. 1999); *Krikorian*, 984 F.2d at 468)  
9 (2) the agency “failed or refused to interview government officials for whom there  
10 was strong evidence that they might have been helpful in finding the missing  
11 documents,” *id.* (citing *Valencia–Lucena*, 180 F.3d at 327–28) (3) the agency  
12 “ignored indications in documents found in its initial search that there were additional  
13 responsive documents elsewhere,” *id.* (citing *Campbell v. United States Dep’t of*  
14 *Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998)), and (4) there is evidence of “distribution  
15 of responsive documents” between agencies, and Defendant agency was in  
16 possession of them, *id.* (citing *Founding Church of Scientology of Wash., D.C., Inc.*  
17 *v. Nat’l Sec. Agency*, 610 F.2d 824, 834 (D.C. Cir. 1979)). As discussed above, each  
18 of these circumstances specified in *Iturralde* apply here, and militate that ICE be  
19 ordered to conduct additional searches for documents responsive to Parts 1-3 as to  
20 Mr. Vargas Arellano.

21           **2. Part 5.**

22           Part 5 seeks records that identify detainees released from immigration custody  
23 while hospitalized. Pl.’s FOIA Request at 6, ECF No. 1-1. ICE’s search is inadequate  
24 because the agency has refused to conduct any search for records related to ICE’s  
25 Significant Detainee Illness (“SDI”) list and ICE’s SDI meetings. ICE has provided  
26 no justification as to why its SDI files “are not reasonably likely to contain responsive  
27 records.” *Nolen v. Dep’t of Justice*, 146 F. Supp. 3d 89, 97 (D.D.C. 2015) (citation  
28 *ACLU of Southern California v. U.S. ICE, et al.*, Case No. 2:22-CV-04760-SHK  
PLAINTIFF’S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT  
AND OPPOSITION TO DEFENDANTS’ CROSS-MOTION

1 and quotation marks omitted). Nor can it: Part 5 specifically requested that ICE’s  
2 search include “the Significant Detainee Illness Spreadsheet.” ECF No. 1-1 at 6.

3 As Plaintiff has explained to ICE on multiple occasions, *see* ECF No. 112-4 at  
4 64-65, 88-89, 100-01, 139, the SDI list is highly likely to identify detainees released  
5 from custody while hospitalized because criteria for detainee placement on the list  
6 includes “[c]ritical illness,” placement “in intensive care for 24 hours or more,”  
7 “[p]otentially life-threatening medical condition requiring urgent action,” and  
8 “[s]ignificant coordination required to . . . release a detainee[] . . . due to their medical  
9 condition.” ECF No. 112-4 at 125 (ICE’s Significant Detainee Illness Directive  
10 (2015)).<sup>2</sup> Criteria for a detainee’s removal from the SDI list includes if “[t]he detainee  
11 . . . is released from ICE custody” or “is deceased.” *Id.* at 126. ICE’s SDI Directive  
12 also specifies that “[t]he SDI meeting is a collaborative effort involving IHSC, ERO  
13 Field Operations,” and others. *Id.* at 125.

14 Instead, ICE has flatly refused to conduct any search for records related to its  
15 SDI list and meetings. ECF No. 112-4 at 34, 73, 79. ICE claims only that the request  
16 is burdensome because of the large number of people who have participated in SDI  
17 meetings. Def.’s MSJ at 21. But the government cannot avoid a search on a claim  
18 that it would be “unduly burdensome” where it “has not reviewed any portion of this  
19 search.” *Mattachine Soc’y of Washington, D.C. v. United States Dep’t of Just.*, 267  
20 F. Supp. 3d 218, 226 (D.D.C. 2017). Moreover, Plaintiff has never suggested that  
21 ICE conduct a search of the “hundreds of individuals” who participated in “the SDI  
22 process.” Def.’s MSJ at 21. Indeed, Plaintiff repeatedly suggested ways to narrow  
23 the search, including limiting it only to custodians who attended SDI meetings  
24 themselves, ECF No. 112-4 at 65, and ICE has declined to engage with these

26 <sup>2</sup> See also ICE, *Significant Detainee Illness (SDI)*, Dec. 3, 2021, at 2-4  
27 [https://www.ice.gov/doclib/foia/policy/directive11853.3\\_SignificantDetaineeIllness.pdf](https://www.ice.gov/doclib/foia/policy/directive11853.3_SignificantDetaineeIllness.pdf) [<https://perma.cc/6RSN-BYSY>] (specifying same).

1 attempts. Most importantly, ICE has not responded to Plaintiff's proposal at summary  
2 judgment to narrow the search to records of Dr. Ada Rivera and staff from ICE's  
3 ERO Field Operations who regularly participate in the SDI meeting, or indicated why  
4 such a search would be unduly burdensome. Pl.'s Mot. Summ. J. at 20, ECF No. 112.

5 ICE cannot meet its burden to show that its search for Part 5 was reasonably  
6 calculated to uncover all relevant documents, as it has not searched for SDI-related  
7 records. For that reason, ICE's summary judgment motion should be denied, and the  
8 court should order a further search.

9 **3. Parts 6 and 7**

10 Parts 6 and 7 seek records, including significant incident reports (SIRs) that  
11 mention the release of hospitalized detainees from custody and the death of any  
12 detainee previously released from custody while hospitalized. ECF No. 1-1 at 6-7.<sup>3</sup>  
13 ICE's search is inadequate because it has refused to search and produce responsive  
14 records developed and possessed by ICE's Joint Intelligence Operations Center  
15 ("JIOC").

16 SIRs are created by ICE field agents "to provide information and awareness to  
17 ICE field and headquarters managers regarding field events."<sup>4</sup> Once submitted, the  
18 "SIRs are available to various [Significant Event Notification (SEN)] users including  
19 the appropriate ICE HSI Special Agent in Charge, the appropriate ERO Field Office  
20 Director (FOD), the appropriate ICE Field Intelligence Group (FIG), and the ICE

---

22 <sup>3</sup> ICE's summary of Parts 6 and 7 could be read to suggest that SIRs and SENs are  
23 created by ICE's OPR, which is not the case. Def.'s MSJ at 21. Indeed, Plaintiff has  
24 clarified this point to ICE. See ECF No. 112-4 at 65 (noting that Parts 6-7 requested  
25 SIRs and SENs and are not limited to records created by DHS OIG and OPR, and  
that "or" is a grammatically disjunctive term).

26 <sup>4</sup> DHS, *Privacy Impact Assessment for the Significant Event Notification (SEN)*  
System 1-2, Oct. 15,  
27 2021, <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice023a-sen-october2021.pdf> [<https://perma.cc/7EEE-A6JW>].

1 Joint Intelligence Operations Center (JIOC) which analyzes the SIRs and sends  
2 summaries of them to the appropriate . . . field offices.”<sup>5</sup> ICE does not dispute this  
3 fact. Def.’s Resp. to Pl.’s Statement of Uncontroverted Facts ¶ 7, ECF No. 113-3.  
4 SIRs are not created by the Office of Professional Responsibility (“OPR”), nor are  
5 SIRs available to OPR staff as SEN users.<sup>6</sup>

6 In its motion, ICE identifies the staff it tasked to search for Parts 6-7, including  
7 three OPR employees, two IHSC employees, one Custody Programs Division  
8 employee, and an ERO Field Operations employee. Def.’s MSJ at 22-23. However,  
9 a close examination reveals that none of these custodians were ever likely to possess  
10 SIRs. None of these staff are in divisions to which SIRs are disseminated, as made  
11 clear by DHS’s own assessment of the system.<sup>7</sup> Indeed, ICE’s Custody Management  
12 staff noted that it “does not manage SIRs or SENs . . . .” *Id.* at 23. Meanwhile, ICE  
13 also claimed that it could not search for responsive SIRs without individual  
14 identifying information such as names or A-numbers to enter into its system. For that  
15 reason, Plaintiff repeatedly suggested that ICE conduct a search for SIRs compiled  
16 by JIOC with the agreed-upon search terms, as no individual entry of identifying  
17 information would be necessary. ECF No. 112-4 at 65.

18 ICE claims that it has not refused to conduct a search of JIOC for responsive  
19 records. Def.’s MSJ at 23. Again, a close examination reveals the dodge: ICE states  
20 that it identified JIOC as among “the program offices likely to have responsive  
21 records (if such records existed),” Def.’s Statement of Uncontroverted Facts ¶ 19,  
22 ECF 113-2, and that it “tasked the JIOC ‘to conduct a search for documents  
23 responsive to Subparts 6 and 7,’” Def.’s MSJ at 23 (quoting Pineiro Decl. ¶ 67). But  
24 JIOC (an ICE division) “‘deferred its tasking’” (or in plain terms, did not conduct the

25  
26 <sup>5</sup> *Id.*

27 <sup>6</sup> *Id.*

28 <sup>7</sup> See *id.*

1 search), ““because the information it receives originates with ERO”” (another ICE  
2 division). *Id.* at 24 (quoting ECF No. 74 at 5). ICE then falls back on its excuse that  
3 ERO cannot search records without individual identifying information—but never  
4 explains why ERO did not instruct JIOC to conduct a search of its summaries, using  
5 the agreed-upon search terms, and review the responsive records for production. *Id.*  
6 And ICE’s excuse that “someone would have to go in and check search terms for  
7 each individual day” for JIOC records is not a credible reason to refuse to conduct a  
8 search. Def.’s MSJ at 24. ICE’s argument is conclusory and unsupported with any  
9 specific information. Moreover, ICE has agreed to collect a broad number of  
10 responsive documents and then run a search in Relativity of those collected  
11 documents in other parts of the case. To the extent that ICE claims that such a search  
12 is not technologically feasible, Plaintiff is willing to confer with Defendants’  
13 technical staff to determine an efficient solution.

14 ICE JIOC cannot claim that a search is “futile,” particularly given that it has  
15 admitted that it has identified and possesses responsive information that it has refused  
16 to search and process. *Compare Stein v. CIA*, 454 F. Supp. 3d 1, 23 (D.D.C. 2020)  
17 (“an agency can establish that a search would have been futile by showing that it does  
18 not maintain any records related to the subject of the request.”) (cleaned up, citation  
19 omitted). For these reasons, ICE’s motion for summary judgment fails, and the court  
20 should order that ICE conduct a search, process, and produce responsive JIOC  
21 records.

#### 22           **4. Part 8**

23           Part 8 seeks records involving people released from ICE detention while  
24 hospitalized with COVID. ECF No. 1-1 at 7. Through these records, Plaintiff can  
25 identify others who—like Mr. Vargas Arellano—died of COVID in ICE detention  
26 without appearing in ICE’s official death statistics, as well as those who were  
27 released from custody while hospitalized for COVID-19. ICE has searched one

1 custodian for these documents, but it has refused to search within the records on  
2 COVID hospitalizations that it kept in connection with reporting in its *Fraihat v. ICE*  
3 litigation.<sup>8</sup> Def.’s Resp. to Pl.’s Statement of Uncontroverted Facts ¶¶ 8, 9, ECF No.  
4 113-3; Pineiro Decl. ¶ 74.

5 ICE does not dispute that it required facilities to log information about  
6 COVID-related hospitalizations in its *Fraihat* records, or that these records were “the  
7 only place” where it was capturing COVID hospitalization data. Def.’s Resp. to Pl.’s  
8 Statement of Uncontroverted Facts ¶¶ 8, 9. ICE admits that it never searched its  
9 *Fraihat* records. Pineiro Decl. ¶ 74. The undisputed facts thus show that ICE has  
10 never searched in “the only place” where it has responsive information. Def.’s Resp.  
11 to Pl.’s Statement of Uncontroverted Facts ¶ 9. These facts are dispositive: ICE must  
12 search its *Fraihat* records “in response to a general FOIA request for which [these  
13 records] may be relevant.” *Campbell*, 164 F.3d at 28-29; *see also Pub. Just. Found.  
14 v. Farm Serv. Agency*, No. C 20-01103 WHA, 2020 WL 6787136, at \*6 (N.D. Cal.  
15 Oct. 5, 2020).<sup>9</sup>

16 ICE’s counterargument is a red herring. ICE points to Plaintiff’s tailored  
17 request involving only a specific subset of those hospitalized with COVID: those  
18 who were also released while hospitalized. *See* ECF No. 1-1 at 7. ICE assumes that

---

19 <sup>8</sup> *Fraihat v. U.S. Immigr. & Customs Enf’t*, No. 5:19-cv-01546 (C.D. Cal. filed  
20 Aug. 19, 2019).

21 <sup>9</sup> ICE’s declarant states that the “Office of the Principal Legal Advisor (OPLA) at  
22 ICE continues to litigate the *Fraihat* case and has done so since the beginning of the  
23 pandemic,” and claims that “OPLA has not been responsible for tracking  
24 hospitalizations or releases of detainees.” Pineiro Decl. ¶ 74. The statement that  
25 “OPLA has not been responsible for tracking hospitalizations . . .” is irrelevant, as it  
26 does not refute Plaintiff’s undisputed evidence that **someone** at ICE has been tracking  
27 hospitalizations in the *Fraihat* records. Def.’s Resp. to Pl.’s Statement of  
28 Uncontroverted Facts ¶¶ 8, 9. The declarant is also wrong that OPLA “continues to  
litigate the *Fraihat* case”: DOJ, not ICE OPLA, served as ICE’s litigation counsel in  
*Fraihat*, and the case was dismissed before the declaration was signed. *Fraihat*, No.  
5:19-cv-01546, ECF No. 431 (C.D. Cal. Mar. 17, 2025).

1 a search of its *Fraihat* records would identify documents that contain a mix of  
2 responsive information (for people who were released) and non-responsive  
3 information (for people who were not released). Def.’s MSJ at 25. ICE then argues  
4 that it would be burdensome to “cross compare” these hospitalization records with  
5 release records to go through the documents line-by-line and remove the non-  
6 responsive information from them. *Id.*; Pineiro Decl. ¶ 74. But this additional  
7 filtering is unnecessary, negating the burden it claims. In fact, this line-by-line  
8 excising of non-responsive information would go against DOJ guidance that “[i]f any  
9 of the information on a page of a document falls within the subject matter of a FOIA  
10 request, then that entire page should be included as within the scope of that request.”  
11 *FOIA Update: OIP Guidance: Determining the Scope of a FOIA Request* (Jan. 1,  
12 1995), <https://www.justice.gov/archives/oip/blog/foia-update-oip-guidance-determining-scope-foia-request> [https://perma.cc/NTZ6-RUZL].<sup>10</sup> All that Plaintiff  
13 seeks is a search “reasonably expected to produce the information requested.”  
14 *Oglesby v. U.S. Dep’t of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990); *see also*  
15 *Transgender L. Ctr.*, 46 F.4th at 779. ICE needs only to conduct this search and  
16 produce the documents it obtains (subject to exemptions). It need not further filter  
17 within these documents.  
18

## 19       5.     Part 9

20       Part 9 seeks hospital bills for people released from ICE custody while  
21 hospitalized, along with communications about these bills. ECF No. 1-1 at 7. Plaintiff  
22 can use these bills and communications to identify other people, beyond the four  
23

---

24       <sup>10</sup> ICE also mentions that it produced its reports in *Fraihat* under a protective order.  
25 Def.’s MSJ at 25. If this is an argument against production, it fails. *See Anderson v. Dep’t of Health & Hum. Servs.*, 907 F.2d 936, 945-46 (10th Cir. 1990) (rejecting an  
26 argument that information covered by a protective order in another case necessarily  
27 was exempt under FOIA). And regardless, the appropriate way to address  
28 confidentiality concerns in a FOIA case is not for an agency to refuse to search; it is  
through the FOIA exemptions.

1 people named in Plaintiff's FOIA request, who were similarly released while  
2 hospitalized, and to understand the financial impact of ICE's practice of deathbed  
3 releases. ICE has fallen far short of adequately searching in response to this request.  
4 All it has done is to search its billing records for the four people named in Plaintiff's  
5 FOIA request. Pineiro Decl. ¶¶ 75-81.

6 The facts surrounding ICE's search are undisputed. ICE found two locations  
7 to search. First, its FOIA office conducted interviews and identified nine custodians.  
8 Def.'s Resp. to Pl.'s Statement of Uncontroverted Facts ¶ 10. Second, it identified  
9 responsive billing records in "Sharepoint and eClinicalWorks." Pineiro Decl. ¶ 76.  
10 ICE tried once to search the nine custodians and then gave up when that lone attempt  
11 hit a technical issue. Pineiro Decl. ¶ 80. It conducted a single search of Sharepoint  
12 and eClinicalWorks for the four people named in Plaintiff's FOIA request and then  
13 did absolutely nothing to search for records for others not named in Plaintiff's  
14 request. *Id.* at ¶ 76. On this undisputed factual record, ICE cannot carry its "burden  
15 to demonstrate adequacy beyond material doubt." *Transgender L. Ctr.*, 46 F.4th at  
16 779 (citation and quotation marks omitted). Plaintiff thus should prevail on this issue.

17 The question, then, becomes what relief Plaintiff is due. Plaintiff's original  
18 proposed relief would have required ICE to run a search that it has previously  
19 represented it could run. ECF No. 112-2, 4. However, despite ICE's earlier  
20 representations that it could run this search, it now states it cannot. Pineiro Decl.  
21 ¶ 80.<sup>11</sup> As a result of ICE's change in position, Plaintiff's relief must change. Plaintiff  
22 therefore seeks the following relief:

23  
24 

---

<sup>11</sup> ICE accuses Plaintiff of "complain[ing] that ICE provided its search summary to  
25 Plaintiff just the week before this brief is due." Def.'s MSJ at 8 n.2 (citation,  
26 quotation marks, and alteration omitted). That is not Plaintiff's concern. Instead,  
27 Plaintiff takes issue with the fact that ICE misrepresented its search to Plaintiff for  
over a year, waiting until this search summary to admit that it had never run the search  
it committed to complete. Pl.'s Mot. Summ. J. at 31.

- 1       1. Within two weeks of the Court’s order, ICE should search the nine people it  
2       has identified as “most likely to possess responsive records,” ECF No. 112-4  
3       at 74, using each of the fifteen search terms identified in its November 2, 2023  
4       search proposal, and should provide a hit count for each search term (or should  
5       state if any term resulted in so many hits that it, alone, caused a technical  
6       problem). ICE has stated that a search that includes documents that hit on any  
7       of these fifteen terms is so broad that it has caused these custodians’ systems  
8       to crash. Pineiro Decl. ¶¶ 78, 80. Providing hit counts will allow the parties to  
9       narrow this search so it is technologically feasible. The parties can then discuss  
10      an appropriate Boolean search to further narrow the results.  
11  
12      2. Within two weeks of the Court’s order, ICE should provide a declaration  
13      stating whether it can query its claims database to produce a spreadsheet of all  
14      claims involving the Procedure Codes 99291, A0427, A0431, and A0433—  
15      four codes related to high-level emergency transport to hospitals. *See* Pl.’s  
16      Mot. Summ. J. at 28 n.22. ICE can query this database by “alien number[] and  
17      referral authorization number[].” Pineiro Decl. ¶ 76. This spreadsheet includes  
18      Procedure Codes, indicating that the Procedure Codes are in the database. ECF  
19      No. 112-6 at 4. ICE should conduct this query for specific Procedure Codes if  
20      possible. *See Ctr. for Investigative Reporting v. United States Dep’t of Just.*,  
21      14 F.4th 916, 938 (9th Cir. 2021) (holding an agency’s FOIA obligations  
22      encompass “a query to search for and extract a particular arrangement or subset  
23      of data already maintained in an agency’s database”); 6 C.F.R. § 5.4(i)(2)(ii)  
24      (extracting “specific requested fields or records contained within a well-  
25      defined database structure usually is considered business as usual” for DHS  
26      FOIA responses).  
27  
28      3. The parties should meet and confer, and within two weeks of the court’s order  
29      should provide a joint statement to the Court setting out either an agreed search  
30      or their separate positions on what search is appropriate for this Part.

### III. CONCLUSION

For the aforementioned reasons, Plaintiff’s Motion for Partial Summary Judgment should be GRANTED, and Defendants’ Cross-Motion for Summary Judgment should be DENIED.

//

//

//

1           The undersigned counsel of record for Plaintiff certifies that this brief contains  
2 4,630 words, including footnotes, which complies with the word limit of L.R. 11-6.1  
3 (7000 words).

4

5 Respectfully submitted this April 9, 2025.

6 /s/ Laboni A. Hoq

7 8 9 10 11	LABONI A. HOQ (SBN 224140) laboni@hoqlaw.com HOQ LAW APC P.O. Box 753 South Pasadena, California 91030 Telephone: (213) 973-9004	EUNICE CHO (pro hac vice) echo@aclu.org AMERICAN CIVIL LIBERTIES UNION FOUNDATION NATIONAL PRISON PROJECT 915 Fifteenth Street NW, 7th Floor Washington, DC 20005 Telephone: (202) 548-6616
12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	EVA BITRAN (SBN 302081) ebitran@aclusocal.org ACLU FOUNDATION OF SOUTHERN CALIFORNIA 1313 West Eighth Street Los Angeles, California 90017 Telephone: (213) 977-9500 Facsimile: (213) 915-0219	KYLE VIRGIEN (SBN 278747) kvirgien@aclu.org AMERICAN CIVIL LIBERTIES UNION FOUNDATION NATIONAL PRISON PROJECT 425 California St., Suite 700 San Francisco, CA 94104 Telephone: (202) 393-4930  <i>Attorneys for Plaintiff</i>